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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 564

CONFEDERATION LIFE ASSOCIATION,
a Canadian Corporation,

Petitioner,

vs.

MANUEL ANTONIO VEGA y ARMINAN,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
ARGUMENT	6
CONCLUSION	17

TABLE OF AUTHORITIES

Case	Page
Auten v. Auten, 129 N.E. 2nd 99	11
Clay v. Sun Ins. Office, 377 U.S. 179	11, 12
Confederation Life Ass'n v. Ugalde, 164 So.2nd 1	13
Confederation Life Ass'n v. Arminan, 144 So.2nd 85	8
Delmonico v. State, 155 So.2nd 368	16
Imperial Life Ass. Co. v. Colmenares, 1967 Canada Law Reports, Supreme Court	8, 9, 10
Jacksonville v. Peninsular Land, 157 So. 661	16
Pan American Life Ins. Co. v. Blanco, 362 F.2d 167	12
Secombe v. Steele, 61 U.S. (20 How.) 833	14
U.S. v. Penn Mutual Life Ins. Co., 130 F.2nd 495	11
U.S. v. Won Kim Ark, 169 U.S. 655	8

OTHER AUTHORITIES

Se. 4, Declaration of Rights, *Fla. Const.*	8
§624.02210, *Fla. Stats.*	7
§624.0221, *Fla. Stats.*	7
Rule 3.14(c), Fla.App. Rules 32 *F.S.A.*	16
Rule 23 (f), Rules of Supreme Court of the U.S.	16
Bretton Woods International Fund Agreement	12

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BRIEF OF RESPONDENT

Respondent, MANUEL ANTONIO VEGA y ARMINAN, prays that the Court deny the Petition for Writ of Certiorari to review the judgment of the Supreme Court of Florida, opinion filed May 29, 1968.

JURISDICTION

The jurisdiction of this Court should not be invoked because of the failure of the Petitioner to assert a federal right in the lower court and because the case does not present a federal question.

STATEMENT OF THE CASE

Respondent, MANUEL ANTONIO VEGA y ARMINAN, was the plaintiff in the lower court and Petitioner, CONFEDERATION LIFE ASSOCIATION, was Defendant.

This case arose as an appeal of an Interlocutory Order and Opinion entered by the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, sitting in Chancery, which granted the Respondent's Motion for Summary Judgment on the issue of liability and denied the Petitioner's Motion for Summary Judgment (Page 1a to Page 11a of the Appendix of the Petitioner, which will hereinafter be referred to as: App. Pet.).

On or about February 14, 1928, Petitioner, by its duly authorized, agent, executed and delivered to the Respondent, in Havana, Cuba, its policy of insurance (No. 273,630), which was duly issued and executed by its officers in Toronto, Canada, *inter alia*, insuring the life of the Respondent. Moreover, the policy of insurance provided for a stipulated cash surrender value after the Respondent had paid the premiums for twenty years.

The policy contains, *inter alia*, these provisions:

> "All payments under this policy whether they be on the part of the Company or the insured, will be verified in money which is actually legal tender of the United States of America [App. Pet. 14a].

> It is not necessary for the assured or the beneficiary of this policy to utilize any person, firm or corporation to collect this insurance or to obtain some of the benefits indicated by the policy. Write directly to the Confederation of Canada or communicate with the authorized agent of the Company which has his residence nearest the place where you are and who is obligated to attend and facilitate for you any arrangement without any expense for you [App. Pet. 15a].
>
> No restriction obliges the insured under this policy regarding residence, travel or occupation, ... [App. Pet. 15a]."

The Respondent made yearly payments from February 14, 1928, the date of issuance of the policy, until February 14, 1947, making a total during this period of Twenty (20) yearly payments in the sum of $242.00 each. All of the premium payments were made in United States dollars in accordance with the policy provisions.

Around January 1959 a violent revolution took place in Cuba by which the lawful government of Cuba was deposed and an unlawful revolutionary government seized power and has, since that time, maintained power over Cuba as a *de facto* government. This revolutionary government of Cuba, since 1959, has dedicated itself to the doctrine of Communism and maintains over the Cuban people a tyrannical government headed by a ruthless Communistic dictator. This revolutionary government under-

took a systematic campaign to convert the Cuban people into a Communistic society by intimidation, coercion, arrest and imprisonment; effected reprisals against all persons who opposed the regime, and attempted to eliminate the policies and doctrines, both economic and political, which prevailed prior to the revolution.

Respondent, on or about September 2, 1960, departed Cuba and took up residence in the United States of America, in the city of Miami, Florida, and remained in Florida as a bona fide resident of the State of Florida. Moreover, Respondent is a permanent resident of the United States and a permanent resident of the State of Florida and has been granted permanent Immigration Registration No. A-12-447-101, on or about June 2, 1964, by the United States government (App. Pet. 3a).

On or about March 7, 1961, Respondent requested in Miami, Florida, the cash surrender value of the policy as of that date, according to the schedule appearing in the Policy. Petitioner refused to and continues to refuse to pay the cash surrender value of the Policy in U. S. Dollars.

Respondent, because of his opposition to the Communistic form of government, may not return to Cuba without fear for his life and safety (App. Pet. 2a).

Respondent proceeded, by action at law, against the Petitioner on the same policy in the Circuit Court in and for Dade County, Florida, being Case No. 61-L-1651, wherein a Final Order of Dismissal, without Prejudice, was entered, which said Dismissal left the Respondent without an adequate remedy at law. Respondent then

brought this suit in equity which gave rise to this Appeal. The Order and Opinion entered by the Chancellor is the basis of this Interlocutory appeal taken by the Petitioner.

On appeal, the District Court of Appeal of Florida, Third District, affirmed the Circuit Court's decision, with Opinion (App. Pet. 11a).

Petitioner filed in the District Court a Petition for Rehearing, which was granted, and in the alternative a Suggestion of Matter of Great Public Interest. On rehearing the District Court reaffirmed its decision and certified to the Supreme Court of Florida that the case passed on a question of great public interest. A Petition for Writ of Certiorari was granted March 12, 1968. Thereupon, the Supreme Court of Florida received briefs of the parties, heard oral argument and filed its Opinion of May 29, 1968 (App. Pet. 22a). Thereafter, Petitioner filed an extensive Petition for Rehearing, which was denied.

The record does not support the allegations of the Petitioner that the Petitioner maintains in Cuba the assets necessary to meet it obligations in Cuba. Additionally, the record does not support the statement that the Petitioner at all times stood ready to maintain the policies in effect while both parties await changes in the political and legal climate in Cuba.

Petitioner's quote, as set forth at Page 5 of the Petition, concerning the investments in Cuba was in the form of a letter not admissible in evidence, nor admitted into evidence, nor is it supported by the record.

THE WRIT SHOULD NOT BE GRANTED

There is no Federal question involved. The respondent made his payments in United States Dollars prior to the enactment of any of the Cuban Legal Tender Laws or Decrees. The policy, when sued upon, was fully paid up vesting the Respondent with all rights to the cash surrender value of the policy, as of that date, in United States Dollars. Florida courts are not obligated by the International Monetary Fund Agreement to apply the Cuban Monetary Control Laws to the controversy because Cuba is not a member of the International Monetary Fund Agreement. Respondent is a bona fide resident of the United States in the city of Miami, Florida, and accepted the continuing irrevocable offer of the Petitioner to pay the cash surrender value of the policy while he was located in Florida and was a resident thereof. The policy application was sent to the home office of the insurance company in Toronto, Canada, from where the Policy was issued and the signatures of its corporate officers affixed to the policy. Moreover, the policy stipulates that payment is to be verified in money which is actually legal tender of the United States of America, and the Policy, by its terms, contemplates that the insured may change his residence, or travel, and make application for payment of the cash surrender value wherever he is, by applying to the home office of the company or to the agent nearest his residence at the time demand for the cash surrender value is made. Most importantly, the Respondent cannot return to Havana, Cuba, to receive payment for fear of his life and safety as a result of the political situation in Cuba.

The law governing this suit is not Cuban law. The District Court of Appeal of Florida held that the cash surrender value clause constitutes a continuing irrevocable offer by the company which matures into a contractual obligation upon its acceptance by the insured, that the acceptance by the insured was in Florida, and, therefore, Florida law governed the contract. This holding does not impliedly mean that the original contract was a Cuban contract or to be governed by Cuban law. In fact, the District Court specifically stated in its Opinion, filed January 23, 1968, (App. Pet. 11a):

> "However this may be, we are unwilling to join Appellant [Petitioner] in its contention that the situs of the contract in this case is the Republic of Cuba."

The most significant contacts are with the State of Florida; Respondent is a bona fide resident of the State of Florida as is the Petitioner, §624.0221, §624.02210, *Fla. Stats.*, qualify the Petitioner to do business in the State of Florida, and which the Petitioner is doing.

Equally important is the fact that the provisions of the policy dilute and qualify the policy provision concerning payment in Cuba. Of great significance, however, is the fact that nowhere in the policy may be found words contradictory to the provision that all payments under the policy must be in the legal tender of the United States, indicating thereby that the intent of the parties was clearly that the governing law of the policy would be that of the United States because this is the only law which, with certainty, could provide for payment in the United States Dollars as required by the policy.

Common sense dictates that the meeting of the minds of a Canadian insurance company doing business in Cuba, and an insured executing an insurance policy providing that all payments under the contract shall be verified in the legal tender of the United States, the Company having a corporate residence in the same country as the currency specified, would be that the parties intended payment to be in Dollars and be governed by United States' law.

Respondent has expressed by word and deed his intention of continuing his residence in Forida. He has been admitted as a permanent resident of the United States and is entitled to full and equal protection of the law. *United States* v. *Wong Kim Ark*, 169 U.S. 655 (1897); Sec. 4, Declaration of Rights, *Florida Constitution.*

Because the Respondent is a resident of Florida, he is entitled to bring suit on the policy in Florida and may obtain jurisdiction over the Petitioner. *Confederation Life* v. *Arminan*, 144 So. 2nd 805 (Fla. Sup. Ct. 1962).

VIOLATION OF INTERNATIONAL LAW

Petitioner fails in the argument of a violation of International Law and interference in the conduct of foreign relations. Moreover, Petitioner fails to mention the case of *Imperial Life Assurance Company of Canada* v. *Segundo Casteleiro y Colmenares*, 1967 Canada Law Reports, Judgment pronounced May 23, 1967, by the Supreme Court of Canada, where the sole question was whether the proper law of the contracts of life insurance was the law of Ontario or the law of Cuba. The insurance policies in *Imperial Life* were issued through the company's branch office in

Havana, Cuba, in 1942 and in 1947 at a time when the insured was a resident of, and domiciled in Cuba. The parties agreed that if the proper law of the contracts was that of Ontario, the insured was entitled to succeed, but if the law of Cuba applied, the payment of cash surrender value in Dollars to a person resident in the United States (as was the Respondent in 1961 when he surrendered the policy) would be an offense contrary to the Foreign Exchange Contraband Law of Cuba. The two policies in *Imperial Life* were identical in terms and both were written in Spanish and delivered by Imperial Life's Cuban agent to the insured who was then a Cuban national and who had made application in Cuba. Before delivery the policies were duly authenticated before a notary in accordance with the laws of Cuba. It was contended on behalf of the insurance company, on the basis of these facts, that the contracts were made in Cuba and were governed by the law of that country.

The Canadian Supreme Court noted that it was apparent that although the policies did not become effective until certain conditions were fulfilled, which conditions occurred in Cuba, these conditions were in themselves a part of the, "entire contract between the parties"—which, in the court's opinion, was concluded when the policies were mailed in Toronto. The Court stated:

> "The fact that the parties agreed that the policies were not to become effective until the conditions were fulfilled in Cuba did not alter the place where that agreement was made. It has long been recognized that when contracts are to be concluded by post, the place of mailing the acceptance is to be treated as the place where the contracts were made."

The Court further stated:

> "It now appears to have been accepted by the highest courts in England that the problem of determining the proper law of the contract is to be solved by considering the contract as a whole in light of all the circumstances which surround it and applying the law with which it appears to have the closest and most substantial connection.
>
> This test was adopted by privy council in... with Lord Simmonds saying... '[T]he substance of the obligation must be determined by the proper law of the contract, i.e., the system of law by reference to which the contract was made or that with which the transaction had its close and most real connection.'."

The Court, in *Imperial Life*, further stated:

> "While it is clear that all relevant circumstances surrounding the making of a contract are to be given due weight in determining the locality with which it is most closely associated, I am of the opinion that in the present case the fact that both the applications and the policy were prepared in Ontario in a common, standard form which complied with the law of that Province, is to be regarded as proponderating importance in determining the law governing the contracts.
>
> I think it is to be a reasonable inference that a person applying for insurance on a form prepared at the head office of an Ontario company would anticipate that the policies which he was to receive would be governed by the law of that Province, and I think that the form of the policies

which were issued in the present case evidences the fact that the insurer intended to be governed by that law.

For these reasons, as well as for those which have been so fully stated in the reasons for judgment of Mr. Justice MacKay, I am of the opinion that the proper law of these contracts is the law of Ontario."

When the contacts or factors are analyzed which most closely align the parties to a particular area. it is easily apparent that Florida is that area. The Petitioner has posted a cash reserve and proved financial responsibility so as to conduct business in Florida. Through this action alone, the Petitioner has shown its willingness to accept the benefits and burdens of its Florida contacts. *accord, Auten* v. *Auten*, 308 N.Y. 155, 124 N.E. 2nd 99 (Ct. App. N.Y. 1954).

Even if assumed, *arguendo*, that the policy here was governed by Cuban law, the election of the Respondent, while in Florida, to receive the cash surrender value of the policy option constitutes the completion of the contract. The cash surrender option is a continuous, irrevocable offer which can only materialize into a contract by its acceptance, which the Respondent has done. *U. S.* v. *Penn Mutual Life Insurance Co.*, 130 F.2d 495 (3rd Cir. 1942).

There has been no violation of international law, nor is there an interference in the conduct of foreign relations or a deprivation of property without due process of law when the forum properly determines the governing law. *Clay v. Sun Ins. Office*, 377 U.S. 179, 84 S.Ct. 1197, 12 L.Ed. 229 (1964). If the forum has a more than casual connection with the controversy, there is no inhibition to apply the local law consistent with due process to the matter.

"Insurance companies, like other contractors, do not confine their contractual activities and obligations within the state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made. In this very case the policy was sold to Clay with the knowledge that he could take his property anywhere in the world he saw fit without losing the protection of insurance. . . . The contract did not even attempt to provide that the law of Illinois would govern when suits were filed anywhere else in the country. Shortly after the contract was made, Clay moved to Florida and there he lived for several years. His insured property was there all that time. The Company knew this fact. Particularly since the Company was licensed to do business in Florida it must have known it might have been sued there. . . ." *Clay* v. *Ins. Office*, *supra*, at p. 182.

Therefore, the previous holding that it was not compatible with due process for Florida to apply its five-year Statute of Limitations to the insurance policy involved in *Clay*, was error. Florida had ample contacts with the transaction.

There is no question that the effect, if any, of the Bretton Woods International Fund Agreement on this case is vitiated by Cuba's subsequent withdrawal, *Pan American Life Ins. Co.* v. *Blanco*, 362 F.2d 167 (5th Cir. 1966).

Petitioner argues it has been deprived of defenses vested under the law of Cuba which violates the Constitutions of Florida and the United States. Petitioner, however, has not shown, nor asserted any right or defense given by the law of Cuba to the payment of its obligations. The contract is payable, and the Petitioner admits its obligations thereunder. Petitioner has not shown it has not

been unjustly enriched by the premium payments made by the Respondent in United States Dollars for a period of 20 years. Petitioner does not assert a substantive defense to payment of the policy by virtue of the laws of Cuba, e.g., the Cuban Statute of Limitations, or any other substantive defense.

The equitable considerations implicit in this case were not involved in *Confederation Life Ass'n.* v. *Ugalde*, 164 So.2nd 1 (Fla. 1964), nor in any of the other decisions referred to by the Petitioner.

Petitioner states it has maintained its investments in Cuba to cover its Cuban obligations, and which remain subject to Cuban law in regard to these policies.

Moreover, Petitioner states that:

> "[P]etitioner is a mutual company with a great many American policyholders whose annual insurance cost is increased whenever a court awards any policyholder more than his policy insures him against. Petitioner's American policyholders will be among those injured and Petitioner is visited with a double injury through application of the Cuban penal laws which the decisions here would require Petitioner to violate."

There is nothing in the record supporting the matters asserted. For a court to indulge in such an assumption would be without precedent. The Court more reasonably should assume that Petitioner removed all its assets from Cuba immediately, including the U.S. Dollars paid by the Respondent for 20 years, prior to the enactment of the Cuban monetary restrictions. However, there is absolutely no support for either proposition in the record.

DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS

Petitioner places a great emphasis upon the clause in the policy providing that payment is to be made in Havana, Cuba, and argues that international law so requires. International law does not consider the place of payment as determinative of the choice of law to be applied to a contract. The only portion of the insurance contract with which the Respondent has not literally complied is the requirement that payment be made to him in Havana, Cuba, a provision which is ambiguous when read with, and in the light of the entire policy, including the provisions which allow making payments elsewhere, the lack of restriction on the place of residence of the insured, or on travel by the insured and which provide that the insured may merely write to the home office of the Petitioner in Toronto, Canada, for payment of the policy.

Implicit in every contract is that equitable considerations pervade the entire contract. Equity will not allow mere form to defeat the substance of an agreement. *Secombe* v. *Steele*, 61 U.S. (20 How.) 833, (1858), at Page 836, states:

> "At law, if there is an express agreement for the payment of the purchase money, and the delivery of the conveyance of the land by a particular day, and at a particular place, the parties will be bound by it, and time will be of the essence of the contract . . . Time may be made of the essence

> of the contract by express stipulation, or it may become essential by considerations arising from the nature of the property, or the character of the interest bargained. And the principle of a court of equity does not depend upon considerations collateral to the contract merely, nor on the conduct of the parties subsequently, showing that time was not of the essence of the contract in the particular case.
>
> But it must affirmatively appear that the parties regarded time or place as an essential element in their agreement, or a court of equity will not so regard it.
>
> [C]ourts of equity make a distinction in all cases between that which is a matter of substance and that which is a matter of form; and if it find that, by insisting on form, the substance will be defeated, it holds it to be inequitable to allow a person to insist upon such form, and thereby defeat the substance."

There has been no enlargement of the obligations of the contract, nor have the Florida courts attempted to enlarge the Petitioner's obligations. The Florida courts have given effect to the intention of the parties, which is shown by the facts. Moreover, the statement that there is bias manifested against the Petitioner, a Canadian company, cannot be supported by the record, and does violence to the holding in *Imperial Life, supra.*

The Petition does not comply with Rule 23(f) of the Rules of the Supreme Court of the United States. It does not specify at what stage in the proceedings in the Court of first instance, and in the Appellate Court, nor the manner in which the Federal questions sought to be reviewed were raised, nor the method and the way in which they were passed upon by the Court with such pertinent quotations and specific portions of the record and where the matters appear as would show that the Federal question was timely and properly raised. The fact is that the first time a Federal question was raised was in the Petition for Rehearing which was denied by the Supreme Court of Florida. The rule is well settled that no ground or position not taken on the hearing can be assumed in a Petition for Rehearing. *Jacksonville* v. *Peninsular Land*, 27 Fla. 1, 157, 9 So. 661 (1891). Initial presentation of matters on a Petition for Rehearing is improper under Florida law. *Delmonico* v. *State*, 155 So.2d 368 (Fla. 1963). Rule 3.14 (c) Fla. Appellate Rules, 32 *F.S.A.*, provides that the Petition for Rehearing shall not be considered a part of the record in the cause unless so ordered by the Court, or unless rehearing is granted. In this case no rehearing was granted, nor was the Petition for Rehearing ordered to be a part of the record, and as such does not become a part of the record.

CONCLUSION

Respondent respectfully submits that the Court is not required by treaty, general principles of international law or the applicable law to apply the Cuban monetary laws and decrees to the insurance contract herein involved. The defense of place of payment is not a bar to recovery under equitable principles. There exists no federal question upon which this Court should pass or should review. The lower Court's granting of Summary Judgment as to liability was eminently correct.

Respectfully submitted,

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